

RESEARCH MATTERS

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Opinion No. JC-0394

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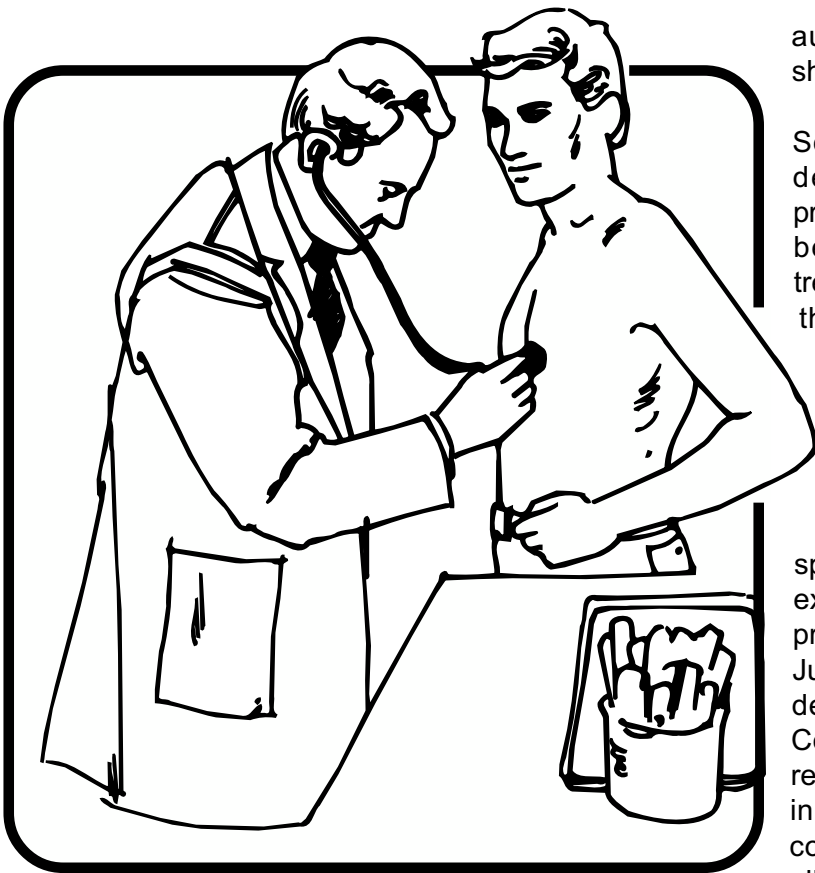


Attorney General Opinion that Federal Law Bars Hospital District from Providing Health Care to Indigent Illegal Aliens Generates Potential Legislation and Lawsuits

On July 10, 2001, in Opinion No. JC-0394, Attorney General John Cornyn ruled that the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) bars the Harris County Hospital District (HCHD) from providing discounted health care to undocumented aliens. PRWORA provides that undocumented aliens are ineligible for state and local public benefits, unless a state enacts a law after August 22, 1996, affirmatively providing that illegal aliens are eligible for certain state or local benefits. Cornyn found that no Texas law affirmatively provides that residents of hospital districts are eligible for public benefits without regard to immigration status.

Cornyn noted that nothing under Texas law precludes HCHD from providing nonemergency medical services to indigent undocumented aliens. However, Cornyn declared, HCHD may not ignore federal law regarding eligibility for nonemergency health care. The federal government has broad constitutional powers over immigration and federal law preempts state laws that are inconsistent with federal immigration policy. Therefore, held Cornyn, HCHD's provision of services to undocumented aliens must comply with federal law. Under PRWORA, undocumented or illegal aliens are ineligible for state and local public assistance. PRWORA preempts all state laws that provide public benefits to illegal aliens contrary to the federal act. The only exceptions to PRWORA's prohibition are emergency medical care and immunizations and the testing and treatment of symptoms of communicable diseases. However, PRWORA also authorizes a state to provide additional public benefits to undocumented aliens if, after August 22, 1996, the state enacts a law affirmatively providing for such eligibility. Cornyn found that the Texas Legislature has not adopted such a law applicable to HCHD.

Cornyn rejected the argument that PRWORA violated the Tenth Amendment of the United States Constitution, which provides that the powers not delegated to the United States are reserved to the states. The Tenth Amendment has been interpreted to mean that Congress may not directly compel states to enact and enforce a federal regulatory program. Although PRWORA authorizes states to enact laws providing that undocumented aliens are eligible for state or local public benefits, PRWORA does not require any state action. Instead, PRWORA simply provides a state the option to enact a law if it wishes to provide more public benefits to undocumented aliens. Although PRWORA may encourage states to enact certain legislation, it does not require them to do so, and therefore does not violate the constitution, Cornyn found.



authorize such expenditures within PRWORA should be addressed to the Texas Legislature.

Some opposing Cornyn's opinion assert that depriving indigent undocumented aliens of preventive health care could endanger public health, because such persons might delay seeking treatment until their health deteriorated to the point they needed costly emergency medical care.

United States Representative Gene Green filed H.R. 2635 on July 25, 2001, which amends PRWORA to allow the use of state or local public benefits for primary or preventive care.

Closer to home, Texas Representative Garnet Coleman of Houston announced that he will sponsor legislation in the 2003 legislative session expressly allowing publicly financed hospitals to provide care to indigent undocumented aliens. On July 26, 2001, Harris County Attorney Mike Stafford declared that a 1999 amendment to the Texas Constitution providing that hospital districts are responsible for providing medical care to "needy inhabitants of the county" could allow HCHD to continue to provide services to undocumented aliens. Attorneys retained by HCHD assert the district has not violated federal law.

Cornyn discussed the possible penalties if HCHD chose to provide routine health care to undocumented aliens despite PRWORA. Although there are no specific enforcement procedures for violating PRWORA, there still could be consequences under state or federal law. HCHD receives funds from Medicare and Medicaid and, as a condition for receiving these funds, must comply with applicable federal laws. Also, it is not unusual for state-funded grants allocated to hospital districts to require that the districts comply with all applicable state and federal laws. If it was found that PRWORA is an applicable federal law under such grants, HCHD's noncompliance could jeopardize state or federal funding. Under state law, HCHD is subject to certain accounting and control procedures. Questions about such expenditures could arise in an audit of the district's financial records. The district's budget is subject to final approval by the Harris County Commissioners Court and the court could take into account unauthorized expenditures when it considers approving the budget. Finally, the HCHD board could also be subject to a taxpayer's suit to enjoin future unauthorized expenditures.

Cornyn dismissed public policy arguments that undocumented aliens residing within the district's boundaries should be eligible for nonemergency health care from the district. He stated that arguments in favor of amending PRWORA must be addressed to Congress, while arguments for legislative action by the state to

On July 30, 2001, the Young Conservatives of Texas (YCT) filed a complaint with Harris County District Attorney Chuck Rosenthal alleging that HCHD was illegally using taxpayer funds to deliver non-emergency health care services to illegal aliens. The complaint charged that, despite Cornyn's opinion, public hospitals in Harris, Bexar, El Paso, and Dallas counties were continuing to provide health care services to undocumented aliens in violation of PRWORA. According to the complaint, HCHD has given \$330 million in free medical care to illegal aliens over the last three years, encouraging illegal immigration and negatively affecting the care given to United States citizens. Rosenthal, in response to the complaint, began a criminal investigation. YCT subsequently filed similar complaints in Dallas, Bexar, and El Paso counties. YCT State Vice Chairman Marc Levin said the organization may file other complaints and, if the district attorneys do not act, might approach a federal attorney or file a lawsuit.

On August 6, 2001, the Montgomery County Hospital District trustees voted unanimously to remove over 400 illegal aliens from that district's indigent-care program in order to comply with Cornyn's ruling. The trustees feared prosecution if the district continued to provide such care.

—by Sharon Hope Weintraub, SRC